Summary

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Summary

From the above discussion the following conclusions emerge:

The Court System in India

The court system in India, which is based on adversarial model of common law, is cumbersome, expensive and too technical. The Supreme Court and the high courts form one single integrated independent judiciary. Below the high courts in each state, there are subordinate courts. The subordinate courts represent the first tier of the entire judicial structure. As a general rule, civil cases are dealt by with one set of hierarchy of courts known as civil courts and criminal cases by another set known as criminal courts. The organization and growth of the present hierarchy of courts of justice with the superior court at the apex and inferior courts at the base owes its origin to the British rule in India. There is a single set of procedural laws and to a great extent, the substantive law enacted by the Parliament. Because of the inherent drawbacks in the procedural laws, there has been a huge pendency of cases in the courts at different levels. Although as a result of the various initiatives taken by the Supreme Court of India, the pendency of cases in the Supreme Court, which was 1,04,936 on 1st January 1992, has come down to 21,716 (i.e., twenty one thousand seven hundred sixteen only) [1] as on October 30, 2001. The situation in the high courts and lower courts is almost static and dismal. The high courts and lower courts are overburdened and have to tackle with voluminous pending and fresh litigation arising everyday. The number of cases pending before High Court and Subordinate Courts as on 31st October, 2001 were 35,57,637 and 2,03,25,756 in High Courts and Subordinate Courts respectively. [2]

The delays are perennial because of the loopholes in the procedural laws, viz., Code of Criminal Procedure, Code of Civil Procedure and the Indian Evidence Act. On the other hand in criminal cases, conviction rate is also very dismal, which has shaken the faith of people in the judicial system. The backlog in the disposal of cases has always remained a big problem,

[1] Govt. of India, Ministry of Law, Justice & Co. Affairs, Rajya Sabha unstarred question No. 2223, answered on 10.12.2001
[2] *Ibid.*

which is not conducive to meet the challenges of globalisation, liberalisation of economy and achievement of welfare state ideals. To tackle the pendency of cases at the sub-ordinate courts, the government, in 2001 envisaged setting up of 1734 Fast Track Courts at various places, out of which 830 have been set-up till October 30, 2001 and permanent *Lok-Adalats* in all the districts of the country. Recent Press Report reveals that Sessions judges and magistrates will now be rewarded for disposing of cases which have been pending for seven years or more. Every month, judicial officers are given units for deciding cases. The units matter when the high court frames its reports card on their performances. The system has yet to put in practice.

Alternative Dispute Resolution

In order to tackle the mounting pressure of litigation and to clear the backlog, the Government through an Amendment of the Constitution in 1976 set-up numerous tribunals, commissions, boards and special courts. Side-by-side the system of Alternative Dispute Resolutions (ADRs) also took shape. The most common forms of ADRs are arbitration, mediation, conciliation, *Lok Adalats, Nyay Panchayats*, and the new emerging ADR of Ombudsman.

Arbitration remains the preferable means of determining a wide range of disputes, involving technical and commercial issues. The major variables in arbitration are the degree of informality in the proceedings and the extent of appeal rights, compared to court adjudication. Prior to the enactment of the Arbitration & Conciliation Act, 1996, the law of arbitration was governed by the Arbitration Act of 1940, the Arbitration (Protocol and Convention) Act 1937 and the Foreign Awards (Recognition and Enforcement) Act 1961. The Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961 provided for the enforcement of foreign arbitral awards mainly in commercial disputes in India.

The Arbitration and Conciliation Act, 1996 made a significant change in the law relating to domestic arbitration. The Act, apart from updating the law of arbitration has provided statutory frame-work for conciliation. Arbitration and conciliation, under the new legislation are independent and autonomous procedures, which derive support from the courts, though they do not require constant supervision and control from courts.

The arbitration, however, is not without problems in India. The law does not prescribe any specific time-frame or procedure to complete/conduct the arbitration. The long delays that take place in the completion of the arbitration proceedings, the number of adjournments sought either by consent of the parties or through the intervention of the court and the enormous expenses incurred by way of fees payable both to the arbitrators and the counsel are some of the problems that are faced by those who opt for arbitration.

Conciliation and mediation are frequently used for resolving labour and family disputes. Counseling plays a crucial role in settlement of these disputes. The Government, keeping in view the long pendency of cases and resultant inconvenience caused to the parties and also in pursuance of the 59th Report of the Law Commission of India, has enacted the Family Courts Act, 1984. It is a court managed conciliation under the Act. It has done away the requirement of lawyers. At present these are 85 (upto October 30, 2001) Family Courts functioning in the country. Because the strong opposition from the lawyers lobby, they have not become so popular.

The *Nyaya Panchayats,* on the other hand, received constitutional recognition with the enactment of the Constitution 73 and 74 (Amendment) Acts. The Acts provided for creation of village *Panchayats* and reservation of 33% of seats for women in the election for members and chairman of these *Panchayats*. There are the direct involvement of people at the grass-root level in the dispensation of justice at the doorsteps of the litigants. The system has been adopted by almost every state in the country by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen on the grounds of economic or other disabilities. This is an informal means of settlement of disputes. However, eexperience has shown that these *Panchayats* have not succeeded in bringing the desired result. The major problem is that there is no mechanism to ensure compliance with the decisions of the Panchayats, though in reality they are invariably followed. This does not rule out access to courts and thus does not provide any solace from the acute problem of monitoring pendency of cases.

In contrast to the above modes, where the courts intervention/access cannot be completely ruled out, the *Lok Adalats* give a finality to the settlement of a case. *Lok Adalat* (people's court) has been developed as an alternative to dispute resolution mechanism. This is

in conformity with Article 39-A of the Constitution of India, which requires the state to take measures for speedy disposal of disputes and provide legal assistance to parties who are in need of it. The Legal Services Authorities Act, 1987 has institutionalised the concept of *Lok Adalats*. Prior to the enactment of the Legal Services Authorities Act, 1987, the Committee for Implementing Legal Aid Schemes (CILAS) used to organize *Lok Adalats*.

A *Lok Adalat* has jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of not only disputes pending before a court but also in respect of any matter which is falling within the jurisdiction of and is not brought before any court for which the *Lok Adalat* is organized. But *Lok Adalat* has no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

In recent years, institution of Ombudsman has come up in various public/private sector business houses for settlement of disputes arising against them. This serves valuable resources of these institutions and quick disposal of cases help to maintain their high profiles. At state level office of *Lok Ayukta* have been set up to act as ombudsman whereas, at the Union level, there is a proposal to set up *Lok Pal*. For the same, a Bill is pending before the Parliament. Quite apart from this, the Department of Administrative Reforms and Public Grievances in the Ministry of Personnel; the Department of Pensions; and the Directorate of Public Grievances in the Cabinet Secretariat also acts as an ombudsman to prevent and control mal-administration as well as to settle grievances of aggrieved members of the public. Besides, the Central Vigilance Commission acts as a central ombudsman to deal with corruption among the public servants.

It is to be noted that these bodies can only make recommendations and their recommendations are not binding on the Government.

Dispute Resource Process in Consumer Protection

The enactment of the Consumer Protection Act, 1986 is a historic milestone in the history of the consumer movement in the country. Prior to that, the remedies in this area were available under the common law, viz., law of torts and contract alongwith other piece meal legislations. The Consumer Protection Act is a benevolent pieces of legislation intended to protect the consumers from exploitation. The Act provides an alternative system of consumer justice by summary trial. The Act applies to all goods and services. It provides a framework for

speedy disposal of consumer disputes and seeks to remove the evils of the ordinary court system. The Act provides for a three-tier consumer disputes redressal machinery (consumer forums) at the national, state and district levels, which provides inexpensive and speedy redressal for consumer disputes/complaints against defective goods, deficiency in services, unfair and restrictive trade practices, or a matter of charging excessive prices etc. However, the Act does not cover breach of contract of potential consumers, i.e., a person who has entered into an agreement for purchase of goods or hiring of any service or provider of a service. In this manner a person suffers harm or damage but such potential consumer is not covered by definition of "consumer" under the Act.

The functioning of the Consumer Forums reveals that in majority of cases there is a prolonged litigation on account of recurrent delays. In most of the cases, the time taken for final resolution went beyond the stipulated period of 90 days. Moreover there are no existing guidelines, which govern the damages to be awarded. The premise of the Act is "fault liability". It does not deal with the "product liability" concept based on "strict liability" as implemented in many jurisdictions.

Dispute Resolution Process in Labour Matters

The Industrial Disputes Act, 1947 provides for the constitution of various authorities for the resolution of industrial disputes. At the lowest level is the work committee. The various methods involved for settlement of industrial disputes under the Act are (i) conciliation; (ii) court of enquiry; (iii) adjudication; and (iv) voluntary arbitration.

Quite apart from the aforesaid statutory machinery, several non-statutory machineries such as Code of Discipline, Joint Management Council, Tripartite Machinery and Joint Consultative Machinery play an important role in the process of preventing and settling industrial disputes.

A survey of the time taken by Labour Court and Industrial Tribunal reveals that it is a time consuming. The following reasons may be attributed for delays in disposal of cases (i) poor quality of personnel; (ii) low status and pay; (iii) procedural delay; (iv) interference by the high courts and stay of proceedings; (v) indifferent attitude of the parties; (vi) indiscriminate adjournment granted by the Presiding Officer of Labour Court or Tribunal.

Apart from the above, there is also the provision for voluntary labour arbitration. But unlike the early 60's, the number of disputes referred to voluntary arbitrators is generally declining after 1990's with the evolution of new foras for redressal of labour disputes. Some of the factors for this trend have already been referred to. Others which are responsible for this trend are: (i) the lack of proper atmosphere; (ii) the reluctance of the parties to resort to arbitration machinery; (iii) lack of persons who enjoy the confidence of both the parties; and (v) the question of bearing the cost of arbitration.

Dispute Resolution Process in Environment Matters

At present there exist 41 legislations to regulate environmental pollution in India. A survey of decided cases reveals that the prosecutions launched in ordinary criminal courts under the provisions of the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981 and the Environment Protection Act, 1986 never reach their conclusion either because of the work-load in those courts or because there is no proper appreciation of the significance of the environment matters on the part of those in-charge of conducting those cases. Moreover, any orders passed by the authorities under Water and Air Acts and the Environment Act are immediately questioned by the industries in courts. These proceedings take years to reach conclusion. Very often, *interim orders* are granted, disabling thereby the authorities from ensuring the implementation of their orders.

India has an extensive framework of environmental laws. Its legislative commitment to environmental policy objectives is highlighted by the inclusion of provisions in the Constitution. This represents an extent of legislative commitment rare in international experience. The Supreme Court of India also, in a series of cases, have recognized the right to environment as an inherent part of the right to life under the Constitution.

Prior to 1986 laws were not exhaustive even in respect of control of pollution. The scope of the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act 1981 limited to air and water pollution. The Environment Protection Act, 1986 has widened the scope to cover other kinds of pollution such as by solid waste, hazardous substance and perhaps even by noise. However one may have a doubt as to whether the definition of 'environmental pollutant' is comprehensive enough to cover all species of

pollutants. It covers only solid, liquid or gaseous substances. Pollution is caused by heat, radiation, and vibration, which do not come within the ambit. It may well be that the measure for protecting and improving the quality of environment may relate to any kind of pollution impacting on the environment. Although the objective of the Environment Protection Act is wider than control of pollution and extends to protection of improvement and environment, no positive measures of mechanisms of the purpose are envisaged in the Act.

However, the environmental regime, as exists presently, needs to be reoriented and strengthened with more expert mechanisms to deal with the larger spectrum of problems hitherto unattended by law. It is primarily meant as a guiding principle for the administrative process to prevent adverse effects on the environment. There is a need of precautionary approach to be adopted by expert environmental agencies at the initial decision making as well as at appellate and reviewing levels.

Although there are issues that remain to be addressed relating to adequacy of the substantive coverage of laws and the coordination among existing laws and regulations, the key issue to be addressed at this times how to strengthen the implementation of the existing laws. It is unfortunate that the National Environment Tribunal Act, 1995 has not yet be enforced and the Constitution of Tribunal is awaited. A comprehensive legislation on environment known as the National Environmental Laws (Amendment) Bill, 1999 is under consideration of the Ministry of Environment and Forest, Government of India. It is hoped that the proposed Bill when passed would become a milestone in this direction.

Despite this impressive array of ADRs in different forms, the workload of the courts have in no way has lessened. It also noticeable that these ADRs, except for *lok adalats,* have not ruled out the access to law courts. This situation has, thus, in no way has affected the attitude of the litigants and the general public towards the judicial system in general and towards courts in particulars. Be that as it may notions of supreme authority of the courts make parties reluctant to submit to the alternative dispute resolution forums, which may or may not conclude matters deemed by the litigants to be of paramount interest to them to their in their favor.

In order to make ADRs really effective their cost effectiveness, time frame, for settling the dispute, the knowledge and status of the presiding officer, and simplification of the procedure etc. must be kept in mind.